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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

DATE: **MAY 30 2013**

OFFICE: NATIONAL BENEFIT CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Petition to Classify Orphan as an Immediate Relative Pursuant to section 101(b)(1)(F)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(F)(i)

ON BEHALF OF PETITIONER:  
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, National Benefit Center (the director) denied the Form I-600, Petition to Classify Orphan as an Immediate Relative (Form I-600) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

*Applicable Law*

The petitioner seeks classification of an orphan as an immediate relative pursuant to section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i), which defines an orphan, in pertinent part, as:

a child, under the age of sixteen at the time a petition is filed in his behalf . . . who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption[.]

The regulation at 8 C.F.R. § 204.3(b) states, in pertinent part, the following:

*Surviving parent* means the child's living parent when the child's other parent is dead, and the child has not acquired another parent within the meaning of section 101(b)(2) of the Act. In all cases, a surviving parent must be incapable of providing proper care as that term is defined in this section.

\* \* \*

*Incapable of providing proper care* means that a sole or surviving parent is unable to provide for the child's basic needs, consistent with the local standards of the *foreign-sending country*.

\* \* \*

*Foreign-sending country* means the country of the orphan's citizenship, or if he or she is not permanently residing in the country of citizenship, the country of the orphan's habitual residence.

*Facts and Procedural History*

The petitioner is a 54-year-old unmarried, naturalized U.S. citizen. She adopted the beneficiary, a native of Nigeria, in August 2009. The petitioner submitted the Form I-600 to U.S. Citizenship and Immigration Services (USCIS) in March 2012, along with a copy of the beneficiary's birth certificate, reflecting her birth in Nigeria on January 18, 2003, and an adoption judgment issued by the Juvenile/Magistrate/High Court of Saki, Oyo State, Nigeria. The petitioner seeks to classify the

beneficiary as the child of a surviving parent (the biological mother) who is incapable of providing proper care to the beneficiary in Nigeria.

The director sent a Request for Evidence (RFE) to the petitioner on June 30, 2012, asking, in part, for evidence that the beneficiary's surviving parent is unable to provide for the beneficiary's basic needs consistent with local standards in Nigeria. On August 28, 2012, the director sent a Notice of Intent to Deny (NOID) stating in part, that initial evidence submitted with the Form I-600 was insufficient to establish that the beneficiary's biological mother was incapable of providing care for the child according to the standards in Nigeria, and affording the petitioner 30 days to establish why the form I-600 should not be denied. After considering the evidence in the record, the director denied the Form I-600 on October 25, 2012, based on a determination that the petitioner had failed to establish that the beneficiary's biological mother was incapable of providing proper care to the beneficiary according to the standards in Nigeria, and that the petitioner had therefore failed to establish that the beneficiary qualified for classification as an orphan under section 101(b)(1)(F)(i) of the Act.

On appeal the petitioner asserts, through counsel, that new medical evidence establishes that the beneficiary's biological mother is ill and unable to provide proper care to the beneficiary in Nigeria. The petitioner asserts that the evidence was not previously provided due to the biological mother's shame and fear of being ostracized in Nigeria.

#### *Analysis*

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find that the evidence in the record does not demonstrate that the beneficiary meets the definition of an orphan as set forth in section 101(b)(1)(F)(i) of the Act.

To establish that the beneficiary's biological mother qualifies as a surviving parent who is incapable of providing proper care for the beneficiary in Nigeria, the petitioner submits a death certificate from the [REDACTED] in Ibadan, Nigeria, reflecting the beneficiary's father's death on November 25, 2011. A letter from the beneficiary's biological mother, dated December 12, 2010, states that since her husband's death, she and their three children live with his elderly parents. Her in-laws are unable to care for them, and her brothers- and sisters-in-law help "with money, clothes, food" and school payments. Because she is a petty trader, she does not "have money for all these things."

In a sworn statement dated September 27, 2012, the beneficiary's biological mother consents and agrees to the release of her children for adoption by their aunt. The biological mother states that she and her children (born October 30, 1999; January 18, 2003; and May 1, 1995) initially lived with her in-laws after her husband's death, but they later moved to a rented room. As a petty trader with no skills or profession, she has no means of maintaining herself and the children. She is also incapable of caring for her children's physical or emotional needs, and she is "financially destitute and emotionally distressed" since the death of her husband.

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An October 3, 2012 sworn affidavit from the beneficiary's paternal grandfather states, in pertinent part, that he has helped support his eldest grandchild financially; however, he is elderly and no longer able to provide financial assistance. The petitioner also helps to support the beneficiary and her siblings financially.

The record contains an undated letter from the [REDACTED], [REDACTED] office in Oyo State, Nigeria, reflecting that an officer visited the beneficiary's biological mother's residence on January 10, 2009. The officer notes that the biological mother lives with her children in a small rented room, which she feels "is inadequate and unhygienic for her and the three children." According to the biological mother's statements, she earns about 600 Nairas a week, the equivalent of about \$4.00. The biological mother states it is difficult to maintain the children adequately on her salary, and the officer agrees that "on the meager income from the petty trade" the beneficiary's biological mother "could not provide the children basic needs such as clothing, good shelter and even sound education." On this basis, the officer recommends adoption by their aunt in order to provide the children with "good education and good living."

The record additionally contains a copy of a December 12, 2012 letter from [REDACTED] submitted on appeal, stating that the beneficiary's biological mother is "under medical care for a chronic medical illness," that "her debilitating medical status has rendered her incapacitated," and that she is "unable to work and provide adequate support for the care of her three children."

Upon review of the entire record, the AAO finds that the petitioner has failed to meet her burden of establishing that the beneficiary's biological mother is incapable of providing for the beneficiary's basic needs, consistent with local standards in Nigeria, as set forth in 8 C.F.R. § 204.3(b).

The [REDACTED] officer's conclusions are based primarily on statements from the biological mother regarding her income and ability to provide for the beneficiary. There is no indication that the officer independently investigated or reviewed evidence of the biological mother's expenses or income and earning capacity in Nigeria. The record also lacks any corroborative evidence regarding local standards in Nigeria. Moreover, the statements made by the biological mother with regard to her income as a petty trader materially conflicts with medical evidence statements that she is incapacitated and unable to work due to a chronic and debilitating medical condition. Furthermore, the medical evidence has diminished evidentiary value, in that the content of the letter is vague, does not contain a diagnosis or explanation of the biological mother's medical condition, and lacks information about when the illness began. In addition, the petitioner's statement that medical evidence was not previously submitted due to the biological mother's shame and fear of being ostracized in Nigeria insufficiently explains why she failed to previously discuss or submit such evidence. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

In visa petition proceedings, the burden of proof rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has failed to establish that the beneficiary's biological mother is incapable of providing for the beneficiary's basic needs, consistent with local standards in Nigeria, as set forth in 8 C.F.R. § 204.3(b). Accordingly, the petitioner has failed to establish that the beneficiary meets the definition of an "orphan," as defined at section 101(b)(1)(F)(i) of the Act.

In addition, although not discussed in the director's decision, evidence in the record reflects that the petitioner did not complete the adoption of the beneficiary in accordance with the laws of Nigeria, as required by 8 CFR § 204.3(d)(iv).<sup>1</sup>

The regulation at 8 C.F.R. § 204.3(d)(1) states, in pertinent part:

*Supporting documentation for a petition for an identified orphan . . . An orphan petition must be accompanied by full documentation as follows:*

\* \* \*

(iv) Evidence of adoption abroad or that the prospective adoptive parents have, or a person or entity working on their behalf has, custody of the orphan for emigration and adoption in accordance with the laws of the foreign-sending country

The U.S. Department of State (DOS) states, with regard to the process of adopting a child in Nigeria, that:

Nigerian law requires that a parent-child relationship be established before the court decision can be considered final. Each state determines the length of time it takes to establish the parent-child relationship.

*See [http://adoption.state.gov/country\\_information/country\\_specific\\_info.php?country-select=nigeria](http://adoption.state.gov/country_information/country_specific_info.php?country-select=nigeria).*

The DOS states further that:

[F]or at least three consecutive months immediately preceding an adoption order, the child must have been in the physical care and legal custody of the applicant parents in Nigeria. An applicant cannot have the child reside with another family member in lieu of living with the applicant, even if a Power of Attorney is in effect.

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<sup>1</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The social welfare officer visits the home of the adoptive parents until the officer is satisfied that the juvenile is settled and the prospective adoptive parents are capable of looking after him or her. In such a case, the social welfare officer reports in writing a positive recommendation to the court. The magistrate will meet the adoptive parents in court to confirm their suitability and will issue or deny the adoption order.

*Id.* In the present matter, the record contains no evidence demonstrating that the petitioner lived in Nigeria at the time the beneficiary's adoption was granted, or that she lived with the beneficiary for three months prior to the beneficiary's adoption. The record also lacks evidence demonstrating that the petitioner's suitability as a parent was assessed by the [REDACTED] and there is no evidence demonstrating that such requirements were waived in the petitioner's case. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Accordingly, the petitioner has not established that the beneficiary's adoption was in compliance with Nigerian law, as required by 8 CFR § 204.3(d)(1)(iv), and the appeal must also be dismissed for this reason.

*Conclusion*

The petitioner has failed to meet her burden of establishing that the beneficiary satisfies the definition of "orphan" as set forth in section 101(b)(1)(F)(i) of the Act. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed. The petition remains denied.